

TO INCLUDE ALL BANKING AGENCIES WITHIN THE EXISTING REGULATORY AUTHORITY UNDER THE FEDERAL TRADE COMMISSION ACT WITH RESPECT TO DEPOSITORY INSTITUTIONS, AND FOR OTHER PURPOSES

DECEMBER 5, 2007.—Ordered to be printed

Mr. DINGELL, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 3526]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3526) to include all banking agencies within the existing regulatory authority under the Federal Trade Commission Act with respect to depository institutions, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. INCLUSION OF ALL BANKING AGENCIES.

(a) **IN GENERAL.**—The second sentence of section 18(f)(1) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)) is amended—

(1) by striking “The Board of Governors of the Federal Reserve System (with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3))” and inserting “Each Federal banking agency (with respect to depository institutions), in consultation with the Commission,”; and

(2) by inserting “in consultation with the Commission” after “shall prescribe regulations”.

(b) **FTC CONCURRENT RULEMAKING.**—Section 18(f) of such Act is further amended by inserting after the second sentence the following: “Such regulations shall be prescribed jointly by such agencies to the extent practicable. Notwithstanding any other provision of this section, whenever such agencies commence such a rulemaking proceeding, the Commission, with respect to the entities within its jurisdiction under this Act, may commence a rulemaking proceeding and prescribe regulations in accordance with section 553 of title 5, United States Code. If the Commission commences such a rulemaking proceeding, the Commission, the Federal banking agencies, and the National Credit Union Administration Board shall consult and coordinate with each other so that the regulations prescribed by each such agency are consistent with and comparable to the regulations prescribed by each other such agency to the extent practicable.”.

(c) **GAO STUDY AND REPORT.**—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall transmit to Congress a report on the status of regulations of the Federal banking agencies and the National Credit Union Administration regarding unfair and deceptive acts or practices by the depository institutions.

(d) **TECHNICAL AND CONFORMING AMENDMENTS.**—Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f)) is amended—

(1) in the first sentence of paragraph (1)—

(A) by striking “banks or savings and loan institutions described in paragraph (3), each agency specified in paragraph (2) or (3)” and inserting “depository institutions, the Federal banking agencies and the National Credit Union Administration Board”;

(2) in the third sentence of paragraph (1)—

(A) by striking “each such Board” and inserting “each such banking agency and the National Credit Union Administration Board”;

(B) by striking “banks or savings and loan institutions described in paragraph (3)” each place such term appears and inserting “depository institutions”; and

(C) by striking “with respect to banks, savings and loan institutions” and inserting “with respect to depository institutions”;

(3) by adding at the end of paragraph (1) the following new sentence: “For purposes of this subsection, the terms ‘Federal banking agency’ and ‘depository institution’ have the same meaning as in section 3 of the Federal Deposit Insurance Act.”;

(4) in paragraph (3), by inserting “by the Director of the Office of Thrift Supervision” before the period at the end;

(5) in paragraph (4), by inserting “by the National Credit Union Administration” before the period at the end; and

(6) in paragraph (6), by striking “the Board of Governors of the Federal Reserve System” and inserting “any Federal banking agency or the National Credit Union Administration Board”.

PURPOSE AND SUMMARY

H.R. 3526, entitled “A bill to include all banking agencies within the existing regulatory authority under the Federal Trade Commission Act with respect to depository institutions,” is intended to provide financial consumers with additional protections against unfair or deceptive acts or practices in or affecting commerce by expanding the range of financial regulators with the authority to promulgate regulations defining with specificity and containing requirements for the purpose of preventing such acts or practices under

the Federal Trade Commission Act (FTC Act). H.R. 3526 expands the range of regulators with promulgation authority under Section 18(f) of the FTC Act (currently the Board of Governors of the Federal Reserve with respect to banks, the Office of Thrift Supervision with respect to savings and loan institutions, and the National Credit Union Administration (NCUA) with respect to Federal credit unions) to include the other Federal banking regulators, namely the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency with respect to institutions that they regulate.

The legislation requires these entities to prescribe any such regulations in consultation with the Federal Trade Commission (FTC), and that such regulations shall be prescribed jointly by such agencies to the extent practicable. The legislation also provides that, whenever the Federal banking agencies and NCUA commence rulemaking under the FTC Act for the entities that they regulate, the FTC may promulgate consistent and comparable rules for the entities that it regulates. The legislation allows the FTC, in those instances, to use standard notice and comment rulemaking procedures under the Administrative Procedure Act. Finally, the bill requires the Comptroller General to conduct a study and report to Congress on the status of regulations of the Federal banking agencies and the NCUA regarding unfair or deceptive acts or practices by depository institutions.

BACKGROUND AND NEED FOR LEGISLATION

Section 5(a)(1) of the FTC Act declares unlawful “unfair or deceptive acts or practices in or affecting commerce.” Section 5(a)(2) authorizes and directs the Federal Trade Commission (FTC) to prevent persons, partnerships, or corporations, “except banks, savings and loan institutions described in section 18(f)(3), [and] Federal credit unions described in section 18(f)(4)” from using unfair or deceptive acts or practices in or affecting commerce. Section 18(a)(1)(B) authorizes the FTC to prescribe rules which define with specificity acts or practices in or affecting commerce within the meaning of Section 5(a)(1).

Section 18 (f) of the FTC Act addresses the rulemaking authority for certain entities excepted from the FTC’s rulemaking authority. It contains three general requirements. First, each agency specified in paragraph (2) or (3) of this subsection must establish a separate division of consumer affairs to receive and take appropriate action upon complaints with respect to such acts or practices by banks or savings and loan institutions. Second, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision (as successor to the Federal Home Loan Bank Board), and the National Credit Union Administration are required to prescribe regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices. Third, whenever the FTC prescribes a rule under subsection (a)(1)(B) of this section, then within 60 days after such rule takes effect, each specified depository institution regulator must promulgate substantially similar regulations imposing substantially similar requirements, unless (1) they find that the acts or practices “are not unfair or deceptive” or (2) the Federal Reserve Board finds that implementation of similar regula-

tions “would seriously conflict with essential monetary and payments systems policies” of the Board, and publishes any such findings and the reasons therefore in the Federal Register.

Since these authorities were granted in the 1970s, they have been sparsely implemented and certainly underutilized. The record indicates that the three named agencies have acted only in the wake of FTC rulemaking. For example, in 1985 the agencies issued equivalents of the FTC’s Credit Practices Rule following the FTC’s action in 1984. The Committee is unaware of any major rulemaking under section 18(f) since then. The FTC, by contrast, has been an aggressive regulator and enforcer, in accordance with a substantial body of jurisprudence, of the prohibition against unfair or deceptive acts or practices under the FTC Act across nearly all industries in the United States, including in the financial services area. The lack of clear and consistent rules and enforcement in this area has left consumers unprotected from a range of abuses across myriad areas including subprime lending, credit card interest rate practices, checking account overdraft fees, and the like.

On May 11, 2007, Rep. Barney Frank, Chairman of the Committee on Financial Services, and Rep. John D. Dingell, Chairman of the Committee on Energy and Commerce, wrote to the heads of the Federal Reserve Board, Office of the Comptroller of the Currency, Office of Thrift Supervision, Federal Deposit Insurance Corporation, and the Federal Trade Commission, expressing concerns about this failure, and asking for aggressive use of the regulators’ authorities under the FTC Act to address unfair or deceptive acts or practices (see Appendix). The Committee is unable to find that any meaningful actions have ensued as a result of this shot across the bow.

The Committee on Financial Services held hearings on June 13, 2007, and July 25, 2007, entitled “Improving Federal Consumer Protection in Financial Services.” Consumer witnesses argued for meaningful and clear rules and enforcement for the benefit both of consumers and the relevant industries. The Comptroller of the Currency and the Chairman of the FDIC both testified that they would support, and use, an extension of FTC Act rulemaking authority to all of the Federal banking agencies. The Committee is not convinced that this reform goes far enough, but is willing to give it a fair opportunity to produce significant results. It has added strengthening amendments to the version reported by our sister committee, and intends to conduct oversight hearings on the implementation of this legislation and the operation of Section 18(f).

HEARINGS

The Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on Tuesday, October 23, 2007, entitled “Enhancing FTC Consumer Protection in Financial Dealings, with Telemarketers, and on the Internet,” which examined three bills: H.R. 2601, H.R. 3461, and H.R. 3526. Testimony was received from Ms. Lydia B. Parnes, Director, Bureau of Consumer Protection, U.S. Federal Trade Commission.

COMMITTEE CONSIDERATION

On Tuesday, October 23, 2007, the Subcommittee on Commerce, Trade, and Consumer Protection met in open markup session and favorably forwarded H.R. 3526, amended, to the full Committee for consideration, by a voice vote. On Tuesday, October 30, 2007, the full Committee met in open markup session and ordered H.R. 3526 favorably reported to the House, amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 3526 reported. A motion by Mr. Dingell to order H.R. 3526 favorably reported to the House, amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings of the Committee regarding H.R. 3526 are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of H.R. 3526 is to reduce the harm to individuals from unfair or deceptive acts or practices by expanding the range of regulators authorized to promulgate regulations identifying and prohibiting such practices under the FTC Act with respect to depository institutions within their respective jurisdictions.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Regarding compliance with clause 3(c)(2) of rule XXI of the Rules of the House of Representatives, the Committee adopts as its own the estimate of budget authority and revenues regarding H.R. 3526 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee finds that H.R. 3526 would result in no new or increased entitlement authority or tax expenditures.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3526 does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 3526 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate on H.R. 3526 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

DECEMBER 4, 2007.

Hon. JOHN D. DINGELL,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3526, a bill to include all banking agencies within the existing regulatory authority under the Federal Trade Commission Act with respect to depository institutions, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Kathleen Gramp.

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 3526—A bill to include all banking agencies within the existing regulatory authority under the Federal Trade Commission Act with respect to depository institutions, and for other purposes

H.R. 3526 would increase the number of federal agencies authorized to issue regulations regarding unfair and deceptive financial practices under the Federal Trade Commission Act. Enacting this bill would allow the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) to issue such rules for institutions under their jurisdiction. Under current law, such rules may only be issued by the Board of Governors of the Federal Reserve, the National Credit Union Administration, and the Federal Home Loan Bank Board. The bill also would require that such regulations be developed in consultation with the Federal Trade Commission (FTC).

CBO estimates that implementing H.R. 3526 would have no significant net impact on federal spending. Based on information from the affected agencies, CBO estimates that the activities required by the bill would increase discretionary costs for the FTC by less than \$500,000 a year. Additional costs incurred by the OCC and FDIC would affect direct spending, but such expenditures would be offset by income from annual fees and deposit insurance premiums, respectively. Thus, CBO estimates that enacting this bill would have a negligible net effect on direct spending and would have no effect on revenues.

H.R. 3526 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not directly affect the budgets of state, local, or tribal governments.

On October 3, 2007, CBO transmitted a cost estimate for H.R. 3526 as ordered reported by the House Committee on Financial Services. That version of the legislation did not require consultation with the FTC in developing these regulations; neither version of the bill would have any significant budgetary impact.

The CBO staff contact for this estimate is Kathleen Gramp. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 3526 prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by H.R. 3526.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1995.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Inclusion of all banking agencies

Section 1(a) amends the rulemaking authority under Section 18(f)(1) of the FTC Act by deleting the current references to the Board of Governors of the Federal Reserve Board (with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions) and instead authorizes each Federal banking agency (with respect to depository institutions) to adopt rules, in consultation with the Federal Trade Commission (FTC).

Section 1(b) further amends Section 18(f) to require that such regulations be prescribed jointly by such agencies to the extent practicable. The legislation also provides that, whenever these agencies commence a rulemaking under the FTC Act, the FTC, with respect to entities within its jurisdiction, may commence a rulemaking proceeding and prescribe regulations in accordance with section 553 of title 5, United States Code. This authority does not limit the FTC's ability to issue rules independently pursuant to Section 18(a) of the FTC Act. It is solely meant to put these regulators on equal footing with respect to use of the notice and comment procedures of the Administrative Procedure Act with respect to coordinated rulemakings under this provision in order to avoid application of inconsistent standards, as well as to improve inter-agency coordination on rulemakings.

If the FTC commences such a rulemaking proceeding, the legislation directs the FTC, the Federal banking agencies, and the National Credit Union Administration (NCUA) to consult and coordi-

nate with each other so that the regulations prescribed are consistent and comparable to the maximum extent practicable.

The authority provided to the banking agencies and the NCUA is not to be construed as limiting the jurisdiction or authority of the FTC in any way. In particular, the substitution of “depository institutions” as defined in section 3 of the Federal Deposit Insurance Act (that is, “any bank or savings association”), in lieu of the prior “banks or savings and loan institutions described in paragraph (3)” is simply a technical change to adopt a shorter phrase.

The Committee expects adherence to the legislation’s consultation requirements. The FTC is the expert agency responsible for ensuring appropriate and consistent interpretation and application, in accordance with a substantial body of jurisprudence, of the prohibition against unfair or deceptive practices in the FTC Act across nearly all industries in the United States, including financial services. For example, the FTC has targeted unfair or deceptive practices in mortgage lending, from advertising and marketing through loan servicing. In the past decade, the FTC has brought 21 such actions, focusing in particular on the subprime market, resulting in courts collectively having ordered more than \$320 million to be returned to consumers. The Committee recognizes that supervisors of depository institutions have specialized expertise as to the institutions that they supervise, but the Committee believes, particularly given the record before it, that it is essential that regulations for depository institutions be in harmony with the broad principles of the statute and its implementation by the FTC.

Section 1(c) requires the Comptroller General to submit to Congress, not later than 18 months after date of enactment of this Act, a report on the status of regulations of the Federal banking agencies and the NCUA regarding unfair or deceptive acts or practices by depository institutions. The Committee expects to conduct vigorous oversight of this area to ensure that consumers of financial services are receiving needed protections against unfair or deceptive trade practices.

Section 1(d) adopts a number of technical and conforming amendments.

APPENDIX
Congress of the United States
House of Representatives
Washington, DC 20515

May 11, 2007

The Honorable Ben S. Bernanke
 Chairman
 Federal Reserve Board
 20th Street and Constitution Avenue, NW
 Washington, DC 20551

The Honorable John C. Dugan
 Comptroller
 Office of the Comptroller of the Currency
 250 E Street, SW
 Washington, DC 20219

The Honorable John M. Reich
 Director
 Office of Thrift Supervision
 1700 G Street, NW
 Washington, DC 20552

The Honorable Sheila Bair
 Chairman
 The Federal Deposit Insurance Corporation
 550 17th Street, NW
 Washington, DC 20429-9990

The Honorable Deborah Platt Majoras
 Chairman
 Federal Trade Commission
 600 Pennsylvania Avenue, NW
 Washington, DC 20580

Dear Chairman Bernanke, Comptroller Dugan, Director Reich, Chairman Bair, and Chairman Majoras:

We are concerned that recent developments are leaving American consumers vulnerable in the financial services marketplace, and seek your cooperation in strengthening federal-level consumer protections and enforcement.

Over the last several years the states, in the absence of strong federal action to enhance consumers' rights, have implemented a host of important specific protections for consumers. Among these are laws on transaction fees and surcharges, protections for gift cards, check cashing fees, certain credit card disclosures, payday lending, and high-cost mortgage lending. In addition, state regulatory and enforcement agencies have had the authority to address a wide array of abusive practices under state unfair and deceptive practices laws.

A series of regulatory actions, ratified by the recent Supreme Court decision in *Watters v. Wachovia*, has significantly reduced the application of state laws and enforcement over a large part of the financial sector. These developments bring into sharp relief an urgent need to rethink the way in which our financial regulators approach consumer protection going forward.

As Chairmen of the Financial Services and Energy and Commerce Committees, we hear frequently about deficiencies in the current regulatory regime. Among these are:

- A disjointed system that leaves many consumers with no idea where to turn when they have problems with a financial services provider. The process for contacting and dealing with federal regulators is cumbersome – average consumers don't know or care about the difference between a federal thrift and a national bank operating subsidiary, nor should they have to in order to get prompt resolution to their complaints.

- Consumers, and sometimes state regulators themselves, are frequently unable to determine what state consumer protection laws continue to apply when they have trouble with a financial institution's actions.
- Serious problems in the subprime mortgage market have produced a significant spike in foreclosures. A number of mortgage lenders have closed their doors or face serious financial difficulty due to dubious lending practices, and an unprecedented number of subprime borrowers facing the loss of their homes.
- Seemingly endless "innovations" in credit card marketing, billing, and other practices that at best confuse, and at worst abuse, consumers who usually seek nothing more than rates they can afford and terms they can understand.

These problems highlight the lack of clear federal policies and regulations to protect financial services consumers. Clear authority exists under the Federal Trade Commission Act and the Home Ownership and Equity Protection Act with regard to unfair and deceptive trade practices on the part of financial institutions. The FTC Act exempts banks, thrifts, and credit unions and the business of insurance from FTC regulation of unfair or deceptive acts and practices in or affecting commerce, meaning that the FTC cannot adopt interpretive rules or take enforcement actions against these institutions. However, the FTC Act states that the Federal Reserve, the Federal Home Loan Bank Board, and the NCUA shall prescribe regulations specifically defining unfair or deceptive acts and practices and mandating requirements to prevent them. The Act also states that the financial regulators shall establish consumer affairs divisions to receive and take appropriate action upon complaints with respect to unfair and deceptive practices by banks and savings and loan institutions. Despite this clear authority, formal rule writing by the agencies against abusive financial practices has been nearly non-existent, and consumers continue to suffer as a result.

It is imperative that the agencies to work together to develop a meaningful strategy for improving federal consumer protection for all financial consumers. We support FDIC Chairman Bair's suggestion before the Financial Institutions Subcommittee March 27 that the Fed "exercise rulemaking authorities it has under (HOEPA) to address abusive practices by all mortgage lenders, not just practices that relate to high cost loans." We would extend that suggestion much more broadly to include aggressive use of the regulators' authority under the FTC Act against unfair and deceptive practices, authority under various other statutes, and development of a streamlined system for handling individual consumer complaints in concert with state enforcement agencies. If such action is not forthcoming from the financial regulators, we will be forced to consider steps such as the removal of the exemption for financial institutions and regulators under the FTC Act.

We ask that you keep the Committees informed of the agencies' progress on this important effort.

Sincerely,



BARNEY FRANK
Chairman
Committee on Financial Services



JOHN DINGELL
Chairman
Committee on Energy and Commerce

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL TRADE COMMISSION ACT

* * * * *

SEC. 18. (a) * * *

* * * * *

(f)(1) In order to prevent unfair or deceptive acts or practices in or affecting commerce (including acts or practices which are unfair or deceptive to consumers) by [banks or savings and loan institutions described in paragraph (3), each agency specified in paragraph (2) or (3)] *depository institutions, the Federal banking agencies and the National Credit Union Administration Board* of this subsection shall establish a separate division of consumer affairs which shall receive and take appropriate action upon complaints with respect to such acts or practices by banks or savings and loan institutions described in paragraph (3), subject to its jurisdiction. [The Board of Governors of the Federal Reserve System (with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3))] *Each Federal banking agency (with respect to depository institutions), in consultation with the Commission, and the National Credit Union Administration Board (with respect to Federal credit unions described in paragraph (4)) shall prescribe regulations in consultation with the Commission to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices. Such regulations shall be prescribed jointly by such agencies to the extent practicable. Notwithstanding any other provision of this section, whenever such agencies commence such a rulemaking proceeding, the Commission, with respect to the entities within its jurisdiction under this Act, may commence a rulemaking proceeding and prescribe regulations in accordance with section 553 of title 5, United States Code. If the Commission commences such a rulemaking proceeding, the Commission, the Federal banking agencies, and the National Credit Union Administration Board shall consult and coordinate with each other so that the regulations prescribed by each such agency are consistent with and comparable to the regulations prescribed by each other such agency to the extent practicable. Whenever the Commission prescribes a rule under subsection (a)(1)(B) of this section, then within 60 days after such rule takes effect [each such Board] each such banking agency and the National Credit Union Administration Board shall promulgate substantially similar regulations prohibiting acts or practices of [banks or savings and loan institutions described in paragraph (3)] *depository institutions, or Federal credit unions described in paragraph (4), as the case may be, which are substantially similar to those prohibited by**

rules of the Commission and which impose substantially similar requirements, unless (A) any such Board finds that such acts or practices of [banks or savings and loan institutions described in paragraph (3)] *depository institutions*, as the case may be, are not unfair or deceptive, or (B) the Board of Governors of the Federal Reserve System finds that implementation of similar regulations [with respect to banks, savings and loan institutions] *with respect to depository institutions* or Federal credit unions would seriously conflict with essential monetary and payments systems policies of such Board, and publishes any such finding and the reasons therefor, in the Federal Register. *For purposes of this subsection, the terms "Federal banking agency" and "depository institution" have the same meaning as in section 3 of the Federal Deposit Insurance Act.*

* * * * *

(3) Compliance with regulations prescribed under this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act with respect to savings associations as defined in section 3 of the Federal Deposit Insurance Act *by the Director of the Office of Thrift Supervision.*

(4) Compliance with regulations prescribed under this subsection shall be enforced with respect to Federal credit unions under sections 120 and 206 of the Federal Credit Union Act (12 U.S.C. 1766 and 1786) *by the National Credit Union Administration.*

* * * * *

(6) The authority of [the Board of Governors of the Federal Reserve System] *any Federal banking agency or the National Credit Union Administration Board* to issue regulations under this subsection does not impair the authority of any other agency designated in this subsection to make rules respecting its own procedures in enforcing compliance with regulations prescribed under this subsection.

* * * * *

